

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

LUCKY WEAH, )  
Plaintiff, )  
v. ) Cause No.: 3:14-cv-01988-PPS-CAN  
CITY OF SOUTH BEND, INDIANA; )  
SOUTH BEND POLICE DEPARTMENT; )  
SOUTH BEND POLICE OFFICER )  
ANDREW HINES AND SOUTH BEND )  
POLICE OFFICERS CURRENTLY UNKNOWN, )  
Defendants.

**MOTION TO DISMISS THE PLAINTIFF'S FEDERAL-BASED  
CLAIM AGAINST DEFENDANT, CITY OF SOUTH BEND  
PURSUANT TO 12(b)(6)**

Comes now the Defendant, City of South Bend, and moves to dismiss the Plaintiff's § 1983 claim against it and in support states the following:

1. Liability against a municipality is not actionable in a §1983 claim unless the Plaintiff can allege some factual content that allows a Court to draw a reasonable inference that it maintained a policy, procedure, custom, or practice that lead to the outcome.
2. The United States Supreme Court and the 7<sup>th</sup> Circuit Court of Appeals requires a Plaintiff to provide specific facts to support the legal claims asserted in a Plaintiff's complaint.
3. In his third cause of action, the Plaintiff asserts no factual allegation that supports his claim that the acts complained of were a result of a City policy, procedure, custom, or practice.
4. The Plaintiff has failed to assert a claim against the City in his third cause of action; he is not entitled to relief as to the particular claim.

WHEREFORE, Defendant, City of South Bend, moves to dismiss the Plaintiff's Federal-based claims against it pursuant to FRCP 12(b)(6).

Respectfully submitted,

/s Jeffrey L. Sanford  
Jeffrey L. Sanford, Atty. No. 14111-71  
Deputy City Attorney  
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(574) 235-9241  
Attorney for the Defendants

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon Jeffrey E. Kimmell, Attorney for Plaintiff, 218 W. Washington Street, Suite 600, South Bend, IN 46601 by depositing same in the United States Mail, postage prepaid this 5<sup>th</sup> day of November, 2014.

s/Jeffrey L. Sanford  
Jeffrey L. Sanford